



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNRL-S, MNDL-S, MNDCL, FFL

Tenants: MNSDS-DR, FFT

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;

A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;

A monetary order for damages or compensation pursuant to section 67; and

Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and

Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. The tenants were accompanied by an interpreter, G.A.

As both parties were present, service was confirmed. The parties each confirmed receipt of the other parties' application, amendments and evidence. Based on the

testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issue

At the commencement of the hearing, I confirmed with the tenants that the names appearing on their own application for dispute resolution and that of the landlord's are correct, even though their surnames appear different on the tenancy agreement. No changes were made to either party's application for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenants?

Should the tenants' security deposit be retained or returned?

Can either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a 1 floor townhouse, with 3 bedrooms and 1 bath, approximately 1200 square feet, built in the 1980's. The bathroom was last renovated in October 2022 and can be considered brand new.

The fixed 6-month tenancy began on January 5, 2023 with rent set at \$3,200.00 for the first 3 months and \$3,400.00 for the last 3 months. The landlord collected a security deposit of \$1,700.00 which she continues to hold.

The parties agreed that occupying the unit would be the tenants' two families, a total of 6 people. The landlord testified that a condition inspection report was done on the first day the tenants moved in and provided a copy of the condition inspection report as evidence. It is noted on the tenancy agreement that the parties finishes a checkin inspection on move-in day; all appliances are working well, nothing wrong. The landlord testified the inspection was actually done around midnight on January 6th because the tenants were tired from packing and moving.

The tenancy ended at the end of the fixed term, on July 1, 2023. The landlord testified that when the tenancy ended, there was extensive damage in the bathroom. There was black mold all around the bathroom, on the ceiling, walls and door frame. The baseboards and cabinets were so bad they had to be replaced. Even the grout had to be regrouted. The landlord provided an invoice for \$3,648.96 for this work to be done. This invoice includes labour and materials.

The last 3 months of the tenancy, the tenants were to pay \$3,400.00 per month in rent. The tenants only paid \$3,300.00 per month in rent for the last 3 months. The landlord seeks to recover \$300.00 in unpaid rent.

The landlord also seeks to recover 3 months of rental income because of lost potential. She was unable to secure a new tenant until December 2023. The landlord argues that July was a bad season to rent because of the rental unit's proximity to the university, September would be better. The renovations were not ready by that time and this window was missed and the rental market fell.

The landlord also seeks to recover 3 months of mortgage interest as a financial loss she sustained because the rental unit was vacant.

The tenants gave the following testimony. They deny the landlord conducted a condition inspection report with them at the beginning of the tenancy. The invoice provided by the landlord is a "fake document", as the contractor company belongs to the landlord. They do not agree or accept the invoice as legitimate. The address for the company shown on the invoice belongs to another one of the landlord's properties and the company has no associated phone number on it. The tenant has no evidence the landlord ever replaced the vanity and did any of the repairs. Also, the tenants say that on the condition inspection report, they accepted the damage but not to replace the vanity.

The reason the tenants didn't pay the full \$3,400.00 rent was because the BC Hydro bill was too high. They asked the landlord to come see the problem with the heaters and the landlord offered 2 choices: have the strata investigate and the tenants pay \$3,400.00 rent or don't ask strata to investigate, and the landlord would reduce rent by \$100.00 per rent. The tenants took the second option. The tenants provided a copy of the whatsapp message to corroborate this.

The tenants deny responsibility for paying rent beyond the 6 month tenancy. The 3-4 months the landlord took to fix the bathroom is unreasonable. The landlord is trying to collect money she is not owed. Likewise the tenants are not responsible for paying interest on the landlord's mortgage.

The landlord gave rebuttal testimony, saying that the tenants knew she had a construction company. They asked for her for a discount, knowing she was in construction. The address on the invoice is one of her business properties. The landlord points out that the tenants acknowledged the damage in the move out condition inspection report and that they would be responsible for fixing it.

The condition inspection report dated July 9, 2023 provides the tenants' forwarding address. The landlord acknowledges receiving it that day.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

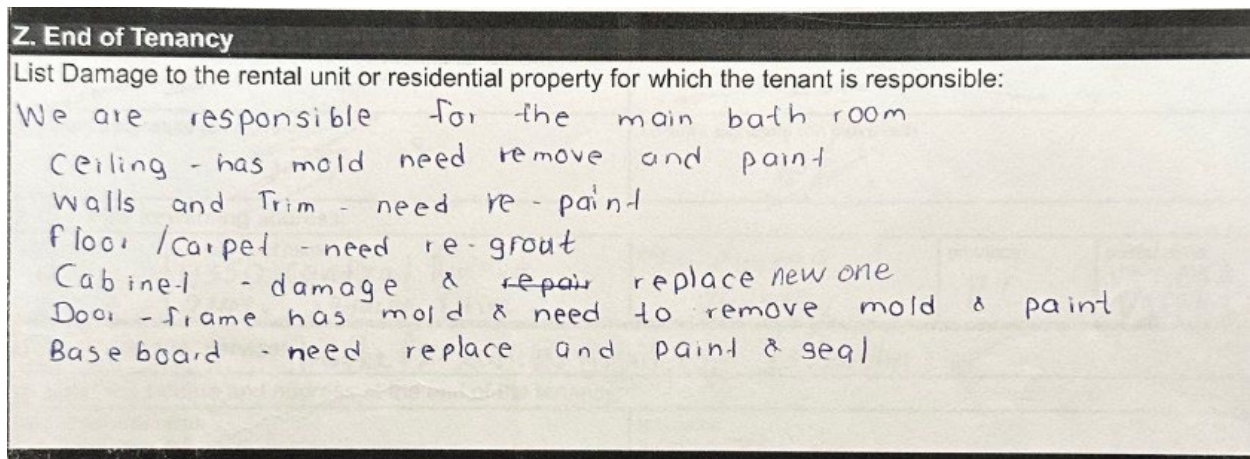
Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 21 of the Residential Tenancy Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I have reviewed the condition inspection report signed by both parties at the commencement of the tenancy and I note that there was no damage in the bathroom. The landlord has corroborated this evidence with photos of the bathroom while it was being renovated, taken on September 20, 2022. I have compared these photos with

those taken by the landlord on July 1, 2023 and I find the rental unit suffered from damage beyond what an informed person would consider reasonable wear and tear for a tenancy of 6 months. I also find the tenants' acknowledgement for the damage on the condition inspection report to be compelling evidence that the landlord should recover the cost of fixing the damage to the bathroom:



Although the tenants argue that the company hired to do the work is illegitimate because it is owned by the landlord, I find no reason to disqualify her company from doing the work. I find it would be reasonable for the landlord to trust the work done by her own company to fix the damage if he own company has the expertise and knowhow. I have reviewed the scope of the work on the invoice supplied by the company and find it closely matches the damage for which the tenants acknowledged responsibility. I do not find the cost for the work to be unreasonable as it does not appear to be exceedingly exorbitant. At the hearing, the tenants did not direct my attention to any smaller quotes for these repairs to be done by certified contractors. Accordingly, I find the landlord is entitled to the compensation as sought, **\$3,648.96**.

The landlord seeks to recover \$300.00 as unpaid rent from March to June, 2023. I have reviewed the text from the landlord dated February 17, 2023 where she offers the tenants the option of paying \$3,300.00 rent for these months as an option instead of going through the trouble of having the strata investigate the heaters and change them after getting approval. I find that the tenants took the option of the \$100.00 reduction in rent and that it was agreed to by the landlord in her offering as an option. I find

insufficient evidence of any entitlement to compensation and I dismiss this portion of the landlord's claim.

The landlord seeks to recover 3 months rent from the time the tenancy ended until the beginning of December. Residential Tenancy Policy Guideline 3 – claims for rent and damages for loss of rent – states at part D the following:

D. Loss of rent due to damage

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the *RTA* and section 30 of the *MHPTA*). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

There is evidence that shows the parties agreed the tenants could make attempts at rectifying the damage to the bathroom between the initial move-out inspection date of July 1 and July 9th, the date the parties signed the condition inspection report. I accept that as of July 9th, the tenants had not repaired the damage or cleaned the unit as agreed to. As such, the landlord had to hire her contracting company to do it during the month of July. I find that the rental unit was un-rentable due to the damaged condition of the rental unit and that the landlord is entitled to compensation from the tenants to cover the landlord's rent for July, 2023. Accordingly, pursuant to section 67 of the Act, I award the landlord **\$3,400.00**, the amount that rent was set at according to the tenancy agreement.

Based on the evidence before me, I do not accept that the time between July and December is a reasonable time for performing the repairs, especially given that the contractor hired to perform the work was the landlord's company. There is no reason why it should take more than a month for the work to be done. I find that the landlord failed to mitigate the damage by failing to complete the repairs in a timely manner and I decline to award the landlord any further rent as compensation.

The last item on the landlord's application is for the tenants to pay the interest on her mortgage for the time the unit remained unoccupied. While I have found the tenants responsible for paying a month's rent for leaving the rental unit reasonably undamaged except for reasonable wear and tear, I found the landlord was sufficiently compensated

with the costs of repairing the damage and an additional month's rent for the loss of rental income for what I consider to be a reasonable time to repair the damage.

The landlord is responsible for bearing the cost of financing the asset that provides her with the income derived from it. It is not the tenant's responsibility to subsidize the landlord's mortgage after the tenancy ends. The landlord testified the repairs to the unit were completed in September (3 months after the tenancy ended) and yet she claims she was unable to re-rent it until December. I find it inconceivable that the landlord would have any difficulty in re-renting the unit in a more reasonable amount of time, and since the landlord did not direct my attention to any evidence of trying to re-rent the unit any sooner, I find the landlord has not mitigated the losses she seeks to recover. Consequently, I do not find sufficient evidence to support the landlord's claim for any additional compensation and I dismiss this portion of the landlord's claim.

Pursuant to section 38 of the Act, the return of the tenant's security deposit is closely related to whether the parties conducted a condition inspection report at the beginning and end of the tenancy and when the landlord received the tenants' forwarding address. I find the parties fulfilled their obligations to participate in one at the beginning and end of the tenancy. Further, I find that the landlord received the tenants' forwarding address on July 9th and filed her application for dispute resolution on July 21st, eleven days later. This is within the 15 days she is required to do so. In accordance with the offsetting provision of section 72, the landlord may retain the tenants' entire security deposit and accrued interest in partial satisfaction of the monetary order I have granted her.

As the landlord's application was successful and the tenants' was not, the landlord is awarded the \$100.00 filing fee and the tenant's filing fee will not be recovered.

Item	Amount
Bathroom repairs	\$3,648.96
July 2023 rent	\$3,400.00
Filing fee	\$100.00
Less security deposit and interest	(\$1,719.47)
TOTAL	\$5,429.49

Conclusion

I award the landlord a monetary order in the amount of **\$5,429.49**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 22, 2024